IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11036 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IMRAN M BUKHARI

Versus

DHARAMSINH DESAI INSTITUTE OF TECHNOLOGY (DEEMED TO BR UNI.)

Appearance:

MR PR NANAVATI for Petitioner

NANAVATI & NANAVATI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/06/2001

ORAL JUDGEMENT

Rule. The matter is taken up for final hearing today with the consent of the learned counsel for the parties.

2. In this petition under Article 226 of the Constitution, the petitioner has prayed for a writ to direct respondent No.1- Dharamsinh Desai Institute of Technology (hereinafter referred to as `the Institute or respondent No.1') to admit the petitioner in M.C.A. Course commencing from the academic year 2000-2001.

3. The petitioner had applied for admission to the Master of Computer Applications (MCA) Course being run by respondent No.1-institute for the academic year 2000-2001. According the respondent-institute, the petitioner's name did not figure in the first merit list and, therefore, the petitioner was not granted admission. The petitioner's name was, however, placed at Sr. No.5 in the wait list. When two students already admitted from the merit list left the institution, an intimation was sent to all the students in the wait list but the petitioner and the other students above the petitioner in the wait list did not turn up and, therefore, the admission was given to the student figuring lower down in the wait list. When the petitioner received the postal intimation, it was too late and therefore the petitioner could not pay the fees and secure the admission. The petitioner, therefore, filed the petition for the aforesaid direction.

4. This Court issued notice and required the respondent-Institute to find out whether the four students above the petitioner in the wait list were interested in securing admission to the above course at respondent-Institute the said students informed the Institute that they had already secured admissions elsewhere and were not interested in joining the M.C.A. course at the respondent-Institute. This Court would have, therefore, passed appropriate orders for directing the respondent-Institute to admit the petitioner to the M.C.A. course for the year 2000-2001. In the meanwhile, however, the first semester was already over and, therefore, the respondent-Institute declined to grant admission to the petitioner as the petitioner could not have been granted terms for want of requisite attendance required under the Rules and the exams for the first semester were also conducted. In view of the above, when the Court called upon the learned counsel for the respondent-Institute to show cause why the petitioner shoud not be admitted to M.C.A. course commencing from June, 2001, the learned counsel submitted that in that event, the Institute would lose one seat for the year 2001-2002 as respondent No.2 All India Council for Technical Education has fixed the number of seats for the M.C.A. course at 30.

5. In view of the above, Mr. Asim Pandya, learned Additional Standing Counsel for the Central Government appearing for respondent No.2 - All India Council for Technical Education (the Council) was called upon to state whether the Council would raise any such objection as apprehended. Mr. Pandya, however, states that he has not received any instructions from respondent No.2-Council. Mr. Nanavaty for the petitioner submits that he does not want his client's fate to be put into jeopardy again this year and that therefore appropriate orders may be passed and suitable directions may be given to the respondent so that the petitioner can commence his studies well in time.

6. Having heard the learned counsel for the parties, it appears to the Court that the petitioner was not permitted to join the M.C.A. course for the year 2000-2001 only on account of the postal delay for which neither the petitioner nor respondent No.1-institute can be blamed. However, a student who is less meritorious than the petitioner secured admission last year and the petitioner was left out in spite of higher merit. Therefore it appears to the Court that the petitioner is entitled to a direction that the petitioner be admitted to the M.C.A. course. The only question which now requires consideration is whether the petitioner should be directed to be admitted to the course commencing from year 2000-2001 or from the year 2001-2002. Mr. Nanavaty for the respondent-Institute at this stage further submits that admissions cannot be granted for the year 2001-2002 without the candidates having appeared at the entrance test for the relevant year. The petitioner had passed entrance test for the year 2000-2001 but the entrance test for 2001-2002 is yet to be held and therefore the petitioner will have to appear at the said test if he is granted to be considered for admission to the course commencing from 2001-2002.

7. In view of the aforesaid peculiar facts and circumstances which have arisen on account of the postal delay for which neither the petitioner nor the respondent-Institute can be held responsible, it appears to the Court that in the aforesaid peculiar facts and circumstances of the case, respondent NO.1-institute is required to be directed to grant admission to the petitioner in the First Year M.C.A. course commencing from 2000-2001 for which the petitioner shall pay the prescribed fees for a free seat to which the petitioner was entitled to but for the postal delay. The petitioner shall also pay the prescribed fees for a free seat

student for the academic year 2001-2002. These fees shall be paid within 15 days from today. Upon payment of such fees, respondent No.1 shall grant admission to the petitioner in the First Year M.C.A. course commencing from 2000-2001 and the petitioner shall be treated as a repeater student in the First Year M.C.A. course for the year 2001-2002 with the result that the number of seats fixed by respondent No.2- Council for the First Year M.C.A. course at respondent No.1-Institute for the academic year 2001-2002 shall not be reduced.

8. It is further directed that respondent No.2 shall consider the petitioner as having been admitted to a supernumerary seat for the year 2000-2001, in case compliance with the aforesaid order amounts to exceeding quota fixed for the year 2000-2001. It is also clarified that the present orders are passed in view of the aforesaid peculiar facts and circumstances of the case and also in view of the statement coming from the learned counsel for respondent No.1-Institute that the Institute has now discontinued the practice of postal intimation and students are required to come and find out their position in the merit list/wait list on the notice board of respondent No.1-Institute and that the merit list/wait list are now also being displayed on the web site of respondent No.1-Institute.

9. The petition is accordingly allowed in terms of the aforesaid directions. Rule is made absolute with no order as to costs.

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